

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM'; OMNI INNOVATIONS, LLC., a Washington limited liability company,

Plaintiffs,

V.

VIRTUMUNDO, INC., a Delaware corporation d/b/a ADNOWLEDGEMAIL.COM; ADKNOWLEDGE, INC., a Delaware corporation, d/b/a ADNOWLEDGEMAIL.COM; SCOTT LYNN, an individual; and JOHN DOES, 1-X.

Defendants.

NO. CV06-0204JCC

**DECLARATION OF MICHAEL
FITZGERALD IN SUPPORT OF
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND
COSTS**

NOTE ON MOTION CALENDAR:

July 6, 2007

I, Michael Fitzgerald, do declare and testify as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters stated herein, and make this declaration from personal knowledge of those matters.

2 I am currently a resident of the State of Missouri

3. Adknowledge, Inc. ("Adknowledge") is organized under the laws of the

1 State of Delaware and has its principal place of business in the State of Missouri.

2 4. I am currently the General Manager of email operations for Adknowledge
3 (my formal title is General Manager, List Management). As such, I am knowledgeable
4 about the business practices, methods and manner of operation at issue in this lawsuit.

5 5. We have processes and procedures in place to ensure that recipients of
6 commercial email sent by us or with our assistance have opted-in to receive commercial
7 email and have not unsubscribed or opted out of receiving such email.

8 6. Every commercial email sent by us or with our assistance in the normal
9 course of business has the physical mailing address of the sender as well as an
10 unsubscribe link on which the recipient may click to be unsubscribed.

11 7. The email domain “@gordonworks.com” has been suppressed since 2006,
12 since about the time we became aware of the lawsuit filed by Gordonworks against
13 Adknowledge. This means that Adknowledge would not send commercial email to any
14 recipient whose email address ended in “@gordonworks.com,” even if they opted-in and
15 requested that we send them email.

16 8. However, we have no way of knowing whether James Gordon opted-in to
17 receive email through a different email address, with a different domain name. Our
18 systems are automated and designed to accept the email addresses provided to them,
19 unless we manually direct them to suppress a particular email address or domain.

20 9. I have reviewed Exhibits B, C and D to the Declaration of James S.
21 Gordon, Jr. executed on July 2, 2007 and declare that they were not sent by
22 Adknowledge. Exhibit B states on its face it was sent by “Charter Communications.”
23 Exhibit C reflects domains – aberystwyth.com; beginrantcause.com – that are unknown
24 to me and not used by Adknowledge. Exhibit D does make reference to
25 faye@gordonworks.com and adknowledgemail.com, but reflects dates in December 2005
26 and January 2006; our records reflect that Faye Gordon opted in to the Adknowledge
27 email network on or about September 27, 2003 and did not unsubscribe from the network.
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1 Rather, she was suppressed in or around February 2006, when we learned of the lawsuit
2 filed by James Gordon. Finally, Exhibit D also clearly reflects that the email was not
3 successfully sent to or received by Adknowledge (page 1 of 3 states "Hi. This is the
4 qmail-send program.... I'm afraid I wasn't able to deliver your message....").

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6 I certify and declare under the penalty of perjury under the laws of the State of
7 Washington and the United States that to my knowledge the foregoing is true and correct.

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9 Executed on this 6th day of July, 2007

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11 Michael Fitzgerald

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